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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Joseph O'Shaughnessy, *et al.*,
Plaintiffs,
v.
United States of America,
Defendant.

No. 2:22-cv-01039-WQH-EJY

ANSWER

Defendant United States of America submits the following Answer to Plaintiffs' Complaint (Doc. 1) responding in like numbered paragraphs to the numbered paragraphs in the Complaint. Any allegation in the Complaint not expressly admitted herein is denied.

This Court's order dated November 20, 2023 (Doc. 50) dismissed some of Plaintiffs' claims which renders many of the allegations in the Complaint moot.

1. Deny.
2. Defendant admits only that venue of the action would be appropriate if Plaintiffs can establish jurisdiction exists for the claims asserted.
3. Defendant has insufficient information to properly respond to the factual

1 assertions in this paragraph, and therefore denies.

2 4. Defendant has insufficient information to properly respond to the factual
3 assertions in this paragraph, and therefore denies.

4 5. Defendant has insufficient information to properly respond to the factual
5 assertions in this paragraph, and therefore denies.

6 6. Defendant has insufficient information to properly respond to the factual
7 assertions in this paragraph, and therefore denies.

8 7. Defendant admits only that Plaintiffs' Complaint refers to these Plaintiffs as
9 the "Tier 2 Plaintiffs." Defendant denies all substantive factual and legal allegations in
10 paragraph 7.

11 8. Defendant has insufficient information to properly respond to the factual
12 assertions in this paragraph, and therefore denies.

13 9. Defendant has insufficient information to properly respond to the factual
14 assertions in this paragraph, and therefore denies.

15 10. Defendant has insufficient information to properly respond to the factual
16 assertions in this paragraph, and therefore denies.

17 11. Defendant has insufficient information to properly respond to the factual
18 assertions in this paragraph, and therefore denies.

19 12. Defendant has insufficient information to properly respond to the factual
20 assertions in this paragraph, and therefore denies.

21 13. Defendant has insufficient information to properly respond to the factual
22 assertions in this paragraph, and therefore denies.

23 14. Defendant admits that Plaintiffs' Complaint refers to these Plaintiffs as the
24 "Bundy Family Plaintiffs." This paragraph makes no factual allegations that require further
25 response.

26 15. Defendant admits that Plaintiffs' Complaint refers to all Plaintiffs as
27 "Plaintiffs." This paragraph makes no factual allegations that require further response.

28 16. Defendant admits, upon information and belief, that all employees listed in

1 this paragraph were acting within their capacities as employees of Defendant when
2 investigating and prosecuting the Tier 2 Plaintiffs. Defendant admits that it is the federal
3 government and admits its agencies include those listed in this paragraph. Defendant denies
4 all other allegations in this paragraph and its subparts.

5 17. Defendant admits only that Plaintiffs' Complaint refers to these individuals
6 as "Government employees." Defendant denies all other allegations in this paragraph.

7 18. Deny. This Court's order dated November 20, 2023 (Doc. 50) dismissed
8 Plaintiffs' claims against the "Doe and Roe Defendants."

9 19. This paragraph contains no allegations.

10 20. Defendant has insufficient information to properly respond to the factual
11 assertions in this paragraph, and therefore denies.

12 21. Defendant has insufficient information to properly respond to the factual
13 assertions in this paragraph, and therefore denies.

14 22. Defendant has insufficient information to properly respond to the factual
15 assertions in this paragraph, and therefore denies.

16 23. Defendant has insufficient information to properly respond to the factual
17 assertions in this paragraph, and therefore denies.

18 24. Defendant has insufficient information to properly respond to the factual
19 assertions in this paragraph, and therefore denies.

20 25. Defendant denies that the Bundy family's cattle were lawfully grazing on
21 federal lands during the time periods relevant to this litigation. As to the remaining
22 allegations, Defendant has insufficient information to properly respond to the factual
23 assertions in this paragraph, and therefore denies.

24 26. Deny.

25 27. Deny.

26 28. Deny.

27 29. Deny.

28 30. Deny.

1 31. Deny.

2 32. Admit that the Cattle Impoundment Operation was unsuccessful, and
3 affirmatively assert that this was due to the criminal acts perpetrated by multiple
4 individuals including some of the Plaintiffs. Deny all remaining allegations.

5 33. Deny.

6 34. Deny.

7 35. Deny.

8 36. This paragraph contains no allegations.

9 37. Deny.

10 38. Deny.

11 39. Deny.

12 40. Deny.

13 41. Defendant admits only that witnesses were interviewed and reports
14 concerning events were created. Defendant denies all other allegations in this paragraph.

15 42. Deny.

16 43. Deny.

17 44. Defendant admits only that it hired contractors to perform work during the
18 impoundment operation. Defendant denies all other allegations in this paragraph.

19 45. Deny.

20 46. Deny.

21 47. Deny.

22 48. Deny.

23 49. Deny.

24 50. Deny.

25 51. Deny.

26 52. Deny.

27 53. Deny. In addition, Defendant neither confirms nor denies any factual
28 allegations involving confidential informants and affirmatively asserts the Government's

1 legal authority to maintain such facts as confidential.

2 54. Deny.

3 55. Defendant admits only that Sherriff Gillespie attempted to calm the situation.
4 Defendant denies all other allegations in this paragraph.

5 56. Deny. Defendant specifically denies that any Nevada officials ordered its
6 employees to “wind-down” the legal impoundment operation, or to release the Bundy
7 family’s cows.

8 57. Deny.

9 58. Deny.

10 59. Deny.

11 60. Deny.

12 61. Deny.

13 62. Deny.

14 63. Deny.

15 64. Deny.

16 65. Deny. Defendant can neither admit nor deny the accuracy of the alleged
17 quotation from Grand Jury proceedings, as such proceedings are sealed.

18 66. Deny.

19 67. Deny.

20 68. Deny.

21 69. Deny.

22 70. Deny.

23 71. Deny. Defendant can neither admit nor deny the accuracy of the alleged
24 quotation from Grand Jury proceedings, as such proceedings are sealed.

25 72. Deny.

26 73. Deny.

27 74. Deny.

28 75. Deny.

1 76. Deny.

2 77. Deny.

3 78. Deny, and specifically deny that the individuals induced by some of the
4 Plaintiffs traveled to Nevada to protest in a manner consistent with the First Amendment
5 free speech clause or religious freedom clause.

6 79. Deny.

7 80. Deny. Defendant can neither admit nor deny the accuracy of the alleged
8 quotation from Grand Jury proceedings, as such proceedings are sealed.

9 81. Deny.

10 82. Deny.

11 83. Deny.

12 84. Deny.

13 85. Deny.

14 86. Defendant admits only that on March 3, 2016, the Tier 2 Plaintiffs were
15 arrested. Defendant denies all other allegations in this paragraph.

16 87. Defendant admits only that an indictment was filed. Defendant denies all
17 other allegations in this paragraph.

18 88. Deny.

19 89. Deny.

20 90. Deny.

21 91. Deny.

22 92. Deny.

23 93. Defendant admits only that the indictment is a document that is readily
24 available to all parties and says what it says. Defendant denies all other allegations in this
25 paragraph.

26 94. Defendant admits only that the indictment is a document that is readily
27 available to all parties and says what it says. Defendant denies all other allegations in this
28 paragraph.

1 95. Deny.

2 96. Deny.

3 97. Defendant admits only that the indictment is a document that is readily
4 available to all parties and says what it says. Defendant denies all other allegations in this
5 paragraph.

6 98. Deny.

7 99. Deny.

8 100. Defendant admits only that the indictment is a document that is readily
9 available to all parties and says what it says. Defendant denies all other allegations in this
10 paragraph.

11 101. Deny.

12 102. Deny.

13 103. Deny.

14 104. Deny.

15 105. Deny.

16 106. Deny.

17 107. Defendant admits only that the indictment is a document that is readily
18 available to all parties and says what it says. Defendant denies all other allegations in this
19 paragraph.

20 108. Defendant admits only that the indictment is a document that is readily
21 available to all parties and says what it says. Defendant denies all other allegations in this
22 paragraph.

23 109. Deny.

24 110. Deny.

25 111. Deny.

26 112. Deny.

27 113. Deny.

28 114. Deny.

1 115. Deny.

2 116. Deny.

3 117. Deny.

4 118. Admit that Mr. Wooten addressed some of his perceived disagreements
5 regarding the prosecution with the prosecution team. Deny any characterization intended
6 by Plaintiffs of these disagreements and specifically deny that Mr. Wooten's personal
7 opinions held merit.

8 119. Deny.

9 120. Deny.

10 121. Deny.

11 122. Defendant admits only that BLM employee Wooten submitted a
12 memorandum making general allegations against the agency and federal employees. The
13 document is readily available to all parties and says what it says. Defendant denies all other
14 allegations in this paragraph.

15 123. Defendant admits only that BLM employee Wooten submitted a
16 memorandum making general allegations against the agency and federal employees. The
17 document is readily available to all parties and says what it says. Defendant denies all other
18 allegations in this paragraph.

19 124. Defendant admits only that BLM employee Wooten submitted a
20 memorandum making general allegations against the agency and federal employees. The
21 document is readily available to all parties and says what it says. Defendant denies all other
22 allegations in this paragraph.

23 125. Defendant admits only that the criminal litigation against the Tier 2
24 defendants involved accusations of failure to disclose documents by the prosecution.
25 Defendant denies all other allegations in this paragraph.

26 126. Defendant admits only that Judge Navarro presided over a hearing
27 concerning potential *Brady* violations. Defendant denies all other allegations in this
28 paragraph and specifically denies that any *Brady* violations in this action negated probable

1 cause to arrest and indict Plaintiffs.

2 127. Defendant admits only that Judge Navarro ruled that there were *Brady*
3 violations that required dismissal of the indictment of the Tier 1 defendants, and that the
4 court's orders in that respect say what they say. Defendant denies all other allegations in
5 this paragraph.

6 128. Defendant admits only that the prosecution moved to dismiss the indictment
7 of the Tier 2 Plaintiffs on February 7, 2018. Defendant denies all other allegations in this
8 paragraph.

9 129. This paragraph contains no allegations. .

10 130. Deny.

11 131. This paragraph contains no allegations.

12 132. Deny.

13 133. Deny.

14 134. Deny.

15 135. This paragraph contains no allegations.

16 136. This paragraph contains legal argument with citations to statutes and cases.
17 Defendant reserves the right to dispute Plaintiffs' interpretation of the applicability of those
18 statutes and cases to the facts of this case once discovery has taken place. To the extent
19 Defendant is required to take a position now, Defendant has insufficient information to
20 admit or deny and therefore denies.

21 137. This paragraph contains legal argument with citations to statutes and cases.
22 Defendant reserves the right to dispute Plaintiffs' interpretation of the applicability of those
23 statutes and cases to the facts of this case once discovery has taken place. To the extent
24 Defendant is required to take a position now, Defendant has insufficient information to
25 admit or deny and therefore denies.

26 138. This paragraph contains legal argument with citations to statutes and cases.
27 Defendant reserves the right to dispute Plaintiffs' interpretation of the applicability of those
28 statutes and cases to the facts of this case once discovery has taken place. To the extent

1 Defendant is required to take a position now, Defendant has insufficient information to
2 admit or deny and therefore denies.

3 139. Deny.

4 140. Deny.

5 141. This paragraph contains legal argument with citations to statutes and cases.
6 Defendant reserves the right to dispute Plaintiffs' interpretation of the applicability of those
7 statutes and cases to the facts of this case once discovery has taken place. To the extent
8 Defendant is required to take a position now, Defendant has insufficient information to
9 admit or deny and therefore denies.

10 142. This paragraph contains legal argument with citations to statutes and cases.
11 Defendant reserves the right to dispute Plaintiffs' interpretation of the applicability of those
12 statutes and cases to the facts of this case once discovery has taken place. To the extent
13 Defendant is required to take a position now, Defendant has insufficient information to
14 admit or deny and therefore denies.

15 143. This paragraph contains legal argument with citations to statutes and cases.
16 Defendant reserves the right to dispute Plaintiffs' interpretation of the applicability of those
17 statutes and cases to the facts of this case once discovery has taken place. To the extent
18 Defendant is required to take a position now, Defendant has insufficient information to
19 admit or deny and therefore denies.

20 144. Deny.

21 145. Deny.

22 23 AFFIRMATIVE DEFENSES

24 1. Plaintiffs' recovery is limited to the damages recoverable under the Federal
25 Tort Claims Act.

26 2. Plaintiffs failed to bring their action within the applicable statute of
27 limitations for filing suit and/or for serving a claim pursuant to the FTCA.
28

1 3. Pursuant to 28 U.S.C. § 2675(b), Plaintiffs are prohibited from claiming or
2 recovering an amount against the Defendant in excess of the amount set forth in any
3 administrative claim he may have presented to the United States or its agencies.

4 4. Pursuant to 28 U.S.C. § 2412(d)(1)(A), Plaintiffs cannot recover attorney's
5 fees from the United States.

6 5. Pursuant to 28 U.S.C. § 2674, Plaintiffs cannot recover any amount for pre-
7 judgment interest from the United States.

8 6. Plaintiffs' complaint, in whole or in part, fails to state a claim upon which
9 relief may be granted.

10 7. Plaintiffs' Complaint fails the requirements of Rule 8 of the Federal Rules
11 of Civil Procedure and merely contains labels and conclusions and threadbare recitals of
12 the elements of causes of action. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
13 (2007).

14 8. Defendant United States did not breach any duty it owed to Plaintiffs.

15 9. Plaintiffs were contributorily negligent.

16 10. Defendants acted reasonably and appropriately under the totality of the
17 circumstances.

18 11. Defendants possessed reasonable suspicion and/or probable cause to
19 believe that the Plaintiffs committed a crime.

20 12. Plaintiffs may have failed to mitigate their damages.

21 13. Defendant hereby reserves the right to plead all other affirmative defenses
22 or any other applicable state and federal statute which through discovery it learns may be
23 applicable.

24 **WHEREFORE**, having fully answered the Complaint, Defendant prays that
25 Plaintiffs take nothing by way of their Complaint, that the same is dismissed, and that
26 judgment be awarded in favor of Defendant, together with costs and such other and
27 further relief as the Court deems appropriate in this case.
28

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2 Respectfully submitted on December 18, 2023.

3 MERRICK GARLAND
4 United States Attorney General

5 *s/ Brock Heathcotte*
6 BROCK HEATHCOTTE
7 NEIL SINGH
8 Special Assistant United States Attorneys, Acting
9 Under Authority Conferred by 28 U.S.C. § 515
10 *Attorneys for Defendant United States*
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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

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s/ Allison Tambs
United States Attorney's Office